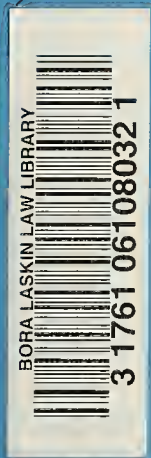




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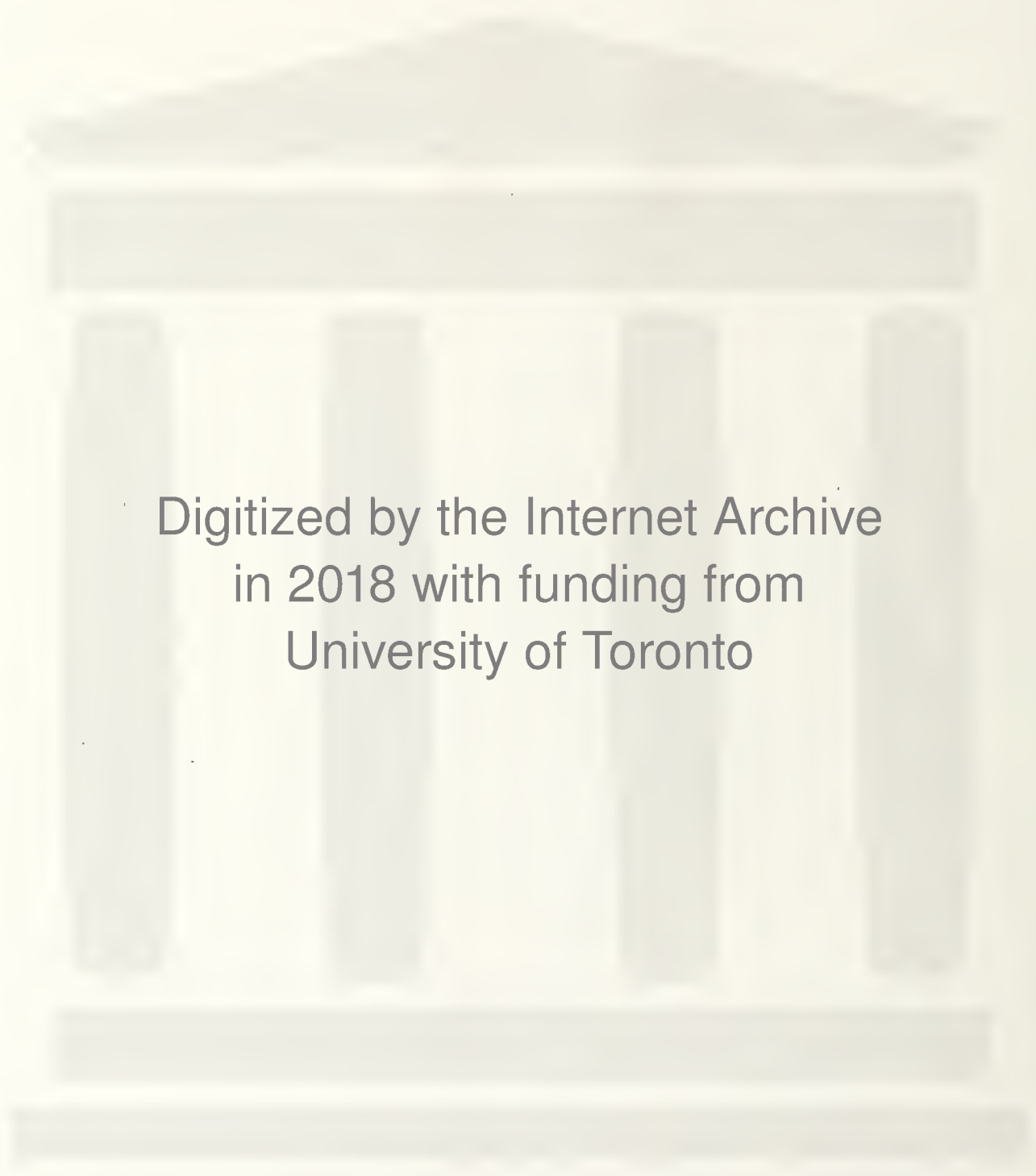
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THE LAW OF MENTAL HEALTH

Falconer Hall 3; Mondays 4:10 - 6:00
Joaquin Zuckerberg; joaquin.zuckerberg@ontario.ca

PAGE NO.

Part 1

Week 1(Jan. 7): General Introduction

No Readings Assigned

Week 2 (Jan. 14): Overview of the Mental Health System

- “Psychiatry Overview” 1
- *MHA*, s. 1 (definition of “mental disorder”) See Appendix
- Grey, John E., Shone, Margaret A. and Liddle, Peter F., *Canadian Mental Health Law and Policy* (Butterworths: Toronto, 2000), pp. 50-66 10
- Bell, Sylvia, “Defining Mental Disorder,” in Warren Brookbanks (ed.), *Psychiatry and the Law* (Wellington: Brooker’s Ltd, 1996), 72-92. Read pp. 72-76 19
- Szasz, Thomas S., “The Myth of Mental Illness,” *American Psychologist*, 15, 113, 118 (1960) 24
- Rose, Nikolas, “Unreasonable Rights: Mental Illness and the Limits of the Law”, *Journal of Law and Society*, Vol. 12, No. 2. (Summer, 1985), pp. 199-218 33

Week 3 (Jan. 21): Capacity and Consent

- “Introduction to Capacity and Consent” 54
- *Health Care Consent Act*, ss. 2 , 4, 11 and 15 See Appendix
- Doron, Israel, “From Lunacy to Incapacity and Beyond-Guardianship of the Elderly and the Ontario Experience in defining “Legal Incompetence”, 19(4) *Health Law in Canada* 95 59
- Hoffman. Brian F., *The Law of Consent to Treatment in Ontario* (2nd ed.), (Toronto: Butterworths, 1997), pp. 1-36 and 49-80 79
- *Starson v. Swayze* 146
- Sexuality, Smoking, Alcohol/Drugs: *CM* (TO-06-3112), *RF* (TB-07-1230) and *Ms. W* (TO-06-0853/54) 206
- Carver, Peter, “A New Direction in Mental Health Law,” in Caulfield, Timothy A. and Von Tigerstrom, Barbara (eds.), *Health Care Reform and the Law in Canada* (Edmonton: Univ. of Alberta Press, 2002) Read only pp. 190-214 242
- O’Reilly, Richard, “Why Are Community Treatment Orders Controversial?” *Can J Psychiatry* 2004; 49:579-584 278
- Enforcement an limitations of CTOs: *Ms MBG* (TO-03-0685) 284

Week 4 (Jan. 28): Substitute Decision Making

- *Health Care Consent Act*, ss. 20, 21 and 37 See Appendix

• Hoffman. Brian F., <i>The Law of Consent to Treatment in Ontario</i> (2 nd ed.), (Toronto, Butterworths 1997), pp. 81-87	301
• Grey, John E., Shone, Margaret A. and Liddle, Peter F., <i>Canadian Mental Health Law and Policy</i> (Butterworths: Toronto, 2000), Chapter 7	308
• Lack of remedy: <i>Mrs. M.G.</i> , LO-06-3953 & 3954	332
• Gray, John E. and O'Reilly, Richard L., "Clinically Significant Differences Among Canadian Mental Health Acts," 315 <i>Can. J. Psychiatry</i> 46 (2001)	337
• Winick, Bruce J., "Advance Directive Instruments for Those with Mental Illness," 51 <i>U. Miami L. Rev.</i> 58 (1996-1997)	344
• <i>Scardoni v. Hawryluck</i> [2004] O.J. No. 300	383
• Wahl, Judith A., "Options for Advance Care Planning"	409
• Wahl, Judith A., "Advance Care Planning in Ontario"	415

Week 5 (Feb. 4): Property Guardianship (Saara Chetner)

• <i>Substitute Decisions Act</i> , Part I; ss. 62 and 79; Reg 100/96 - records and accounts; Reg 460/05 - capacity assessment	See Appendix
• Doron, Israel, "From Lunacy..."	See Week 3
• Doron, Israel, "Elder Guardianship Kaleidoskope- A Comparative Perspective", <i>International Journal of Law Policy and the Family</i> 16 (2002), 368-398	425

Week 6 (Feb. 11): Research, Organ and Tissue Transplantation and Sterilization Involving the Incapable Person (Bernard Starkman)

• s. 6 of the HCCA	See Appendix
• Choose one document from the optional reading	

Week 7 (Feb. 25): Civil Commitment - Part 1

• "Introduction to Involuntary Status."	456
• <i>Mental Health Act</i> , s.1 (definition of "mental disorder"), ss. 20 (1.1), 20(5), 20(8) and 38(1)	See Appendix
• Gray, John E. and O'Reilly, Richard L. (2001)	See week 4
• Gray, John E. and O'Reilly, Richard L., "Protecting the Rights of People with Mental Illness: Can We Achieve both Good Legal Process and Good Clinical Outcomes?," 23 <i>Health L. Canada</i> 25 (2002)	462
• Gupta, Mona, "All locked up with nowhere to go: treatment refusal in the involuntarily hospitalized psychiatric population in Canada," in Freckelton I, Diesfeld K, eds. <i>Involuntary Detention and Civil Commitment: International Perspectives</i> . Aldershot, UK Ashgate Publishing, 2003: 155-178	470
• Appelbaum, Paul, "Almost a Revolution; An International Perspective on the Law of Involuntary Commitment," 25(2) <i>J. Am. Acad. Psychiatry Law</i> 135, 1997	495
• Psychological harm: <i>L.I.</i> , TO-03-0898, <i>LA</i> , SU-06-5265 & 5266 & 5296, <i>Mr. H.J.Z.</i> , TO-07-0497, <i>Ms. B</i> , TO-07-0274	508

- Review of Form 1s and 2s: Mrs A.N. (TO-05-7474, 7475 & 7476);
Ms L.P. (TO-07-1448 & 1449)..... 554

Part 2

Feb. 29 (FA3 - 2.10 to 4.00 pm): Make Up Class for Week 12 - Mental Health and the Criminal Justice System (Janet Leiper)

- Fitness to Stand Trial: Bloom, Hy and Schneider, Richard, *Mental Disorder and the Law* (Irwin Law: Toronto, 2006), Chapter 3; *R. v. Taylor*, [1992] O.J. No. 2394 (CA)..... 578
- Criminal Responsibility - Part 1: Bloom, Hy and Schneider, Richard, *Mental Disorder and the Law* (Irwin Law: Toronto, 2006), Chapter 5 611
- Constitutionality of Criminal Code Provisions: *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625 628

Week 8 (March 3): Civil Commitment - Part 2

- *Mental Health Act*, ss. 20(8) and 38 See Appendix
- Gray, John E. and O'Reilly, Richard L., (2002) See Week 7
- Dhir, Aaron A. "The Maelstrom of Civil Commitment in Ontario: Using Examinations Conducted During Periods of Unlawful Detention to Form the Basis of Subsequent Involuntary Detention Under Ontario's Mental Health Act," 24 *Health L. Canada* 9 723
- "Prompt" rights advice (prejudice, fault, time calculations):
H. S. K. (TO-03-1275); *MS J.C.* (LO-07-0870); and *P.C.* (TO-07-2014 & 2095) 734
- *Ahmed v. Stefaniu (CA)* 777
- Henry, Yukimi, "Psychiatric Gating: Questioning the Civil Committal of Convicted Sex Offenders", (2001) 59 *U.T. Fac. L. Rev.* 229 - 250 793

March 7(FA3 - 2.10 - 4.00 pm): Make Up Class for Week 13 - International Human Rights and Mental Health Law

Required Reading

- Bonnie, Richard J., "Political Abuse of Psychiatry in the Soviet Union and in China: Complexities and Controversies," *J. Am. Acad. Psychiatry Law* 30:136-44, 2002 819
- *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, 1991. G.A. Res. 199, U.N. GAOR, 46th Sess., Supp. No. 49, Annex, pp. 188-192, 1991. U.N. Doc. A/46/49 828
- Zuckerberg, Joaquin, "International Human Rights for Mentally Ill Persons: The Ontario Experience", *International Journal of Law and Psychiatry*, Vol. 30(6) at 512 840
- Perley, Sharon et. al., "The Nuremberg Code: An International Overview" in Annas, George J. and Grodin, Michael A. (eds), *The Nazi Doctors and the Nuremberg Code* (New York: Oxford Univ. Press, 1992) 149-173 858
- UN Convention on the Rights of Persons with Disabilities, (not yet in force), Arts. 1 (application), 12.5 (property), 14 (liberty and security) and 15 (consent to medical or scientific experimentation) at <http://www.un.org/disabilities/convention/> 883

Week 9 (March 10): Mental Health Courts, Canadian Mental Health Commission and Mental Health Tribunals (joint session with Hon. Edward Ormston)

- Canadian Mental Health Commission's website, <http://www.mentalhealthcommission.ca>. Please visit the website to get a basic understanding of what the background to and Mandate of the Commission
- Consent and Capacity Board's website, www.ccboard.on.ca. Please visit the website to familiarize yourselves with the work of the Board
- *Health Care Consent Act*, Part V See Appendix
- Carney, Terry and Tait, David, "Guardianship Dilemmas and Care of the Aged", 13 *Sidney L. Review* 61 1991, pp. 70-76 918
- Rees, Neil, "International Human Rights Obligations and Mental Health Review Tribunals, 10 *Psychiatry Psychol. & L.* 33 2003 942

Week 10: Privacy and Mental Health (Patrick Hawkins)

Required Reading

- CLASP for Credit Project: Submissions and Recommendations to Reform the Current Toronto Police Service Policy on Retention of Detentions Under the *Mental Health Act* 953
- Handouts will be provided before the class

Week 11 (March 24): Legal Representation of Mentally Ill Patients and Health Practitioners (Janice Blackburn and Anita Szigeti)

- Health Care Consent Act, s.81 See Appendix
- Perlin, Michael, "The Role and Significance of Counsel," 42 *San Diego L. Review* 739 2005 967
- Legal Aid Ontario, "Consent and Capacity Panel Standards," at http://www.legalaid.on.ca/en/info/panel_standards.asp 988
- Tremblay, Paul A., "On Persuasion and Paternalism: Lawyer Decision making and the Questionably Competent Client," 1987 *Utah L. Rev.* 515 1987 992
- Szigeti, Anita, *Representing a Client Who Has a Mental Health Issue before the CCB*, October, 2007 1062

Appendixes

- Health Care Consent Act 1101
- Mental Health Act 1141
- Substitute Decision Act 1169
- Substitute Decision Act; Ontario Regulation 460/05 1212
- Substitute Decision Act; Ontario Regulation 100/96 1214
